

AMENDED IN SENATE SEPTEMBER 2, 2003

AMENDED IN SENATE AUGUST 21, 2003

AMENDED IN SENATE JULY 22, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY MAY 13, 2003

AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1108

Introduced by Assembly Member Bermudez

February 21, 2003

An act to add and repeal Section 3041.5 of the Family Code, relating to family law, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1108, as amended, Bermudez. Child custody: drug testing.

Existing law requires a court to consider the habitual or continual illegal use of controlled substances, as defined, or continual use of alcohol by either parent in making a determination of the best interest of a child in child custody proceedings.

This bill would, until January 1, ~~2007~~ 2008, authorize a court to require any parent who is seeking custody of, or visitation with, a child who is the subject of the proceeding, to undergo testing for the illegal use of controlled substances and the use of alcohol under specified circumstances. The bill would require the court to order the least

intrusive method of testing. The bill would require that testing be in conformity with certain federal procedures, would provide that the results of this testing shall be confidential and maintained as a sealed record, and would permit a parent or guardian who is tested to contest the test results at a hearing. The bill would provide for civil sanctions not to exceed \$2,500 for any breach of the confidentiality of the test results. The bill would prohibit the release of the test results to any person except as specified, or for any purpose, except to assist the court in determining the best interest of the child and the content of the order or judgment determining custody or visitation. The bill would authorize the court to order either or both parties to pay the costs of the testing.

The bill would require the Judicial Council to study and evaluate the implementation of the act and to report to the Legislature on or before specified dates.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3041.5 is added to the Family Code, to
2 read:
3 3041.5. (a) In any custody or visitation proceeding brought
4 under this part, as described in Section 3021, the court may order
5 any parent who is seeking custody of, or visitation with, a child
6 who is the subject of the proceeding to undergo testing for the
7 illegal use of controlled substances and the use of alcohol if there
8 is a judicial determination based upon a preponderance of
9 evidence that there is the habitual, frequent, or continual illegal use
10 of controlled substances or the habitual or continual abuse of
11 alcohol by the parent or legal custodian. This evidence may
12 include, but may not be limited to, a conviction within the last five
13 years for the illegal use or possession of a controlled substance.
14 The court shall order the least intrusive method of testing for the
15 illegal use of controlled substances or the habitual or continual
16 abuse of alcohol by either or both parents or the legal custodian.
17 If substance abuse testing is ordered by the court, the testing shall
18 be performed in conformance with procedures and standards
19 established by the United States Department of Health and Human



1 Services for drug testing of federal employees. The parent or legal
2 custodian who has undergone drug testing shall have the right to
3 a hearing, if requested, to challenge a positive test result. A
4 positive test result, even if challenged and upheld, shall not, by
5 itself, constitute grounds for an adverse custody decision.
6 Determining the best interests of the child requires weighing all
7 relevant factors. The results of this testing shall be confidential,
8 shall be maintained as a sealed record in the court file, and may not
9 be released to any person except the court, the parties, their
10 attorneys, the Judicial Council (until completion of its authorized
11 study of the testing process) and any person to whom the court
12 expressly grants access by written order made with prior notice to
13 all parties. Any person who has access to the test results may not
14 disseminate copies or disclose information about the test results to
15 any person other than a person who is authorized to receive the test
16 results pursuant to this section. Any breach of the confidentiality
17 of the test results shall be punishable by civil sanctions not to
18 exceed two thousand five hundred dollars (\$2,500). The results of
19 the testing may not be used for any purpose, including any
20 criminal, civil, or administrative proceeding, except to assist the
21 court in determining, for purposes of the proceeding, the best
22 interest of the child pursuant to Section 3011, and the content of
23 the order or judgment determining custody or visitation. The court
24 may order either party, or both parties, to pay the costs of the drug
25 or alcohol testing ordered pursuant to this section. As used in this
26 section, "controlled substances" has the same meaning as defined
27 in the California Uniform Controlled Substances Act, Division 10
28 (commencing with Section 11000) of the Health and Safety Code.
29 (b) This section shall remain in effect only until January 1,
30 ~~2007~~ 2008, and as of that date is repealed, unless a later enacted
31 statute, that is enacted before January 1, ~~2007~~ 2008, deletes or
32 extends that date.
33 SEC. 2. (a) The Judicial Council shall study the
34 implementation of this act and shall report to the Legislature
35 regarding that implementation. The study shall evaluate all of the
36 following:
37 (1) The number and percentage of custody cases in which drug
38 or alcohol testing is ordered.

1 (2) The rate of compliance with those orders and the
2 procedures that are followed if a parent fails to comply with the
3 order.

4 (3) The percentage of cases in which testing is ordered and the
5 parent tests positive for the illegal use of drugs or the use of
6 alcohol.

7 (4) The impacts of those positive test results on the court's
8 decision to grant or deny custody or visitation.

9 (b) The Judicial Council shall submit an interim report to the
10 Legislature no later than July 1, 2005, and shall submit a final
11 report to the Legislature no later than July 1, 2007.

12 SEC. 3. This act is an urgency statute necessary for the
13 immediate preservation of the public peace, health, or safety
14 within the meaning of Article IV of the Constitution and shall go
15 into immediate effect. The facts constituting the necessity are:

16 In order to ensure the safety of children who are the subject of
17 custody and visitation proceedings as soon as possible, it is
18 necessary that this act take effect immediately.

